

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**DARWIN RIECK
Facility #56695**

Benton County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2014-AFO- **02**

TO: Darwin Rieck
7727 16th Avenue
Luzerne, Iowa 52257

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Darwin Rieck for the purpose of resolving violations resulting from a manure discharge from Mr. Rieck's open feedlot that resulted in water quality violations and a fish kill. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Tom McCarthy, Field Office 1
Iowa Department of Natural Resources
909 West Street, Suite 4
Manchester, Iowa 52057
Phone: 563/927-2640

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-8563

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1; Iowa Code chapter 459A and the rules adopted or permits issues pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties. Iowa

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Code section 481A.151 authorizes the assessment and recovery of damages to natural resources.

III. STATEMENT OF FACTS

Mr. Rieck neither admits nor denies the Statement of Facts and enters into this administrative consent order for settlement purposes.

1. Darwin Rieck owns and operates Rieck Feedlot located at 1752 76th Street, Blainstown, Iowa. The feedlot is a three acre 700 head of cattle open feedlot. The facility includes a manure settling structure and a grass waterway that acts as a filter strip. The manure is scraped from the open feedlot and stockpiled in the fields.

2. On October 24, 2012, DNR Field Office 1 received an anonymous complaint reporting a fish kill in Prairie Creek, two miles northwest of Blainstown, Iowa. The complainant stated that there were dead fish by a beaver dam northwest of Blainstown. The complainant stated that the area had received an inch of rain two days earlier. DNR Field Office 1 informed the caller that it would investigate the fish kill the following day.

3. On October 25, 2013, Tom McCarthy, DNR Field Office 1 environmental specialist senior, contacted Paul Sleeper, DNR Fisheries Biologist 2, and informed him of the fish kill. Mr. McCarthy and Brian Jergenson, DNR Field Office 1 environmental specialist, began investigating the complaint. A summary of the locations where Mr. McCarthy and Mr. Jergenson visited are noted below and a map of the locations is attached to this administrative consent order.

a. (Site 1) Mr. McCarthy and Mr. Jergenson began at the beaver dam on Prairie Creek near the 19th Avenue bridge northwest of Blainstown, Iowa. Mr. McCarthy observed dead fish and noted a tainted color to the water.

b. (Site 2) The field office personnel then proceeded to the 76th Street bridge over Prairie Creek. The field test indicated no ammonia and the water was clear. The field office personnel observed no dead fish.

c. (Site 3) The field office personnel continued to the 17th Avenue bridge over a tributary of Prairie Creek. The field test indicated a slight detection of ammonia, but considered to be a normal background level of ammonia. A small tributary just east of this location was dry and there was no evidence of contamination from this area.

d. (Site 4) The field office personnel proceeded to the 75th Street bridge over Prairie Creek. A field test indicated no ammonia and no dead fish were observed. The field office personnel observed another beaver dam and a wide stream at this area.

e. (Site 5) The field office personnel continued to the 17th Avenue bridge over Prairie Creek, north of Highway 30. A field test indicated no ammonia and no dead fish were observed. The field office personnel noted paper mill sludge being stockpiled northeast at this location. The field office personnel visited with Robert

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Ritscher, the property owner. Mr. Ritscher stated that the Cedar Rapids sewage sludge and paper mill sludge is applied as a soil amendment and fertilizer. Mr. Ritscher explained that there area is not tiled and there had been no runoff. The field office personnel did not observe any runoff from the sludge stockpiles (Site 6).

f. (Site 7) The field office personnel continued to the 72nd Street bridge over a Prairie Creek tributary. A field test indicated no ammonia and no dead fish were observed.

g. (Site 8) The field office personnel noted a manure application field at the corner of 19th Avenue and 72nd Street. The field office personnel did not observe any evidence of runoff.

h. (Site 9) The field office personnel continued to the 17^h Avenue bridge over a Prairie Creek tributary. At this location, the field office personnel observed manure application that had occurred near a small stream, but there were no dead fish observed. There was also a pasture west of this site, but the field office personnel did not observe any runoff from the pasture.

i. The field office personnel returned to the 19th Street bridge (Site 1). The field office personnel met with Paul Sleeper, DNR Fisheries Biologist, to discuss the fish kill. The field office personnel observed several fish that appeared to have been dead for a few days. The field test indicated a slight amount of ammonia and the water was turbid.

j. (Sites 10 and 11) The field officer personnel continued to the 77th Street bridges in Sections 20 and 21 over a small tributary of Prairie Creek. The field tests indicated no ammonia and no dead fish were observed.

k. The field office personnel visited a feedlot located at 1781 77th Street. They spoke to Duane Andrew, owner of the feedlot, and observed that there was no possible sources of the fish kill from the feedlot and the pasture. Mr. Andrew stated that there had been no discharges from his operation. From this location, the field office personnel observed a large feedlot north of Mr. Andrew's feedlot.

l. Mr. McCarthy and Mr. Jergenson drove to the feedlot north of Mr. Andrew's feedlot. Mr. McCarthy learned that that the feedlot was the Rieck Feedlot. Mr. McCarthy spoke to Darwin Rieck and informed him of the fish kill investigation. Mr. Rieck stated that he sold many of his cattle on Monday, October 22, 2012 and that a maximum of 700 head of cattle are fed on the three acre concrete lots. Mr. Rieck explained that the lots are cleaned out weekly and the manure is stockpiled or land applied. Mr. Rieck said that the area had received 0.8 inches of rain the previous week and that the waterway below the feedlot had been cleaned out on Sunday, October 21, 2012. Mr. Rieck told Mr. McCarthy that he had installed a NRCS designed settling basin about nine years earlier. Mr. McCarthy informed Mr. Rieck that he and Mr. Jergenson would have to look around the facility to check for runoff below the feedlot. Mr. Rieck agreed to the inspection. At this point, rain began to fall more steadily.

m. The field office personnel noted cattle on the east portion of the feedlot and a manure solids settling structure below the feedlots. The field office personnel observed manure laden water and manure solids flowing down the cleaned out waterway.

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n. (Site Discharge) The field office personnel observed cloudy manure laden water discharging into a tributary of Prairie Creek. There was a heavy manure solid accumulation on rip rap placed at the end of the waterway. The field test indicated that the ammonia concentration was greater than 3 parts per million (ppm). The field office personnel noted a strong manure odor in the stream and saw manure solids in the stream and on the stream bottom. The laboratory sample indicated an ammonia concentration of 79 ppm.

o. The field office personnel conducted a field test approximately 100 feet above the feedlot discharge and no ammonia was detected. The water was clear and did not have a manure odor. The laboratory sample indicated an ammonia concentration of 0.16 ppm.

p. The field office personnel conducted a field test approximately three feet below the feedlot discharge and the ammonia concentration was greater than 3 ppm. The water had a strong manure odor and the laboratory sample indicated an ammonia concentration of 42 ppm. As the field office personnel walked back up the waterway, the rain fall intensified and the field office personnel observed an increased amount of manure laden water and manure solids flowing down the waterway.

q. The field office personnel noted the vertical boards on the manure settling structure were placed fairly wide apart. There was a strong flow of manure solids and liquids flowing out of the settling basin. The laboratory sample of this discharge indicated an ammonia concentration of 230 ppm.

r. The field office personnel conducted a field test ten feet above the confluence of Prairie Creek and the tributary that flows by the Rieck feedlot. This area was above the discharge location. The field test indicated no ammonia and a laboratory sample indicated an ammonia concentration of 0.16 ppm.

s. The field office personnel conducted a field test ten feet below the confluence of Prairie Creek and the tributary that flows by the Rieck feedlot. This area was below the discharge and was diluted as the tributary flowed into Prairie Creek. The field test indicated no ammonia and a laboratory sample indicated an ammonia concentration of 0.25 ppm. Mr. McCarty spoke to Mr. Rieck on the telephone and informed him that his feedlot was the cause of the fish kill. Mr. McCarthy informed Mr. Rieck that the manure applied within 50 feet of the tributary (Site 9) would need to be incorporated as soon as possible. Mr. Rieck stated he would comply and that he believed that clearing out the waterway and the rain was bad timing. The field office personnel later met with Mr. Rieck on 76th Street and discussed how ammonia kills fish. The field office personnel told Mr. Rieck that the discharge from the feedlot must be stopped immediately and Mr. Rieck stated that his son would stop the discharge as soon as possible.

4. On October 26, 2012, Mr. McCarthy returned to the area to conduct a follow up investigation. A summary of the locations where Mr. McCarthy visited are noted below.

a. (Site 9) Mr. McCarthy visited the 17th Avenue bridge over a Prairie Creek tributary. The field test indicated no ammonia and the water was clear at this

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location. The laboratory sample indicated an ammonia concentration of 0.12 ppm. At this point, Mr. McCarthy spoke to Mr. Rieck on the telephone. Mr. Rieck thought that his feedlot had done everything correctly to control the feedlot manure and that eight or nine years before a DNR employee visited the feedlot and did not indicate any problems at the feedlot on that day. Mr. McCarthy explained that the earlier visit was only a snapshot on that day and could not determine future compliance. Mr. McCarthy recommended that Mr. Rieck contact NRCS and request technical assistance.

b. Mr. McCarthy returned to the Rieck Feedlot and noted that no manure was flowing down the waterway and that a piece of plywood was blocking the settling structure discharge.

c. (Site 2) Mr. McCarthy returned to the 76th Street bridge over Prairie Creek. The water was clear and no dead fish were observed.

5. On October 29, 2012, George Schaffer, West Union NRCS, contacted Mr. McCarthy about the Rieck Feedlot manure settling basin. They discussed the construction of the manure settling basin.

6. On November 1, 2012, Mr. Rieck contacted Mr. McCarthy by telephone and stated that staff from the Vinton NRCS had visited the feedlot and that the waterway had been reseeded. He also stated that the silt fences had been constructed to reduce erosion. He said that a 40 foot by 20 foot flat piece of concrete had been poured below the settling basin structure to spread out the discharge across the 60 foot waterway. He informed Mr. McCarthy that he thought the new seeding and the changes to the settling basin would keep the facility in compliance. Mr. McCarthy asked about the vertical board spacing on the settling basin. Mr. Rieck stated that the stainless steel structure with holes was initially designed and installed on the settling basin outlet structure, and that the design engineer told him that Mr. Rieck may have to modify it if it plugged too much. When the stainless steel piece started plugging up too much and holding back too much liquid, it was removed and replaced with vertical boards. Mr. Rieck stated that he would modify the stainless steel piece to better settle out manure solids and to slow down the liquid discharge. Mr. McCarthy asked if the manure within 50 feet of the stream had been incorporated. Mr. Rieck stated he would incorporate the manure on the date of the call.

7. Paul Sleeper, with the DNR Fisheries Bureau, conducted the fish kill investigation. The source of the fish kill originated from manure runoff from the Rieck Feedlot and flowed down a waterway and entered Prairie Creek in Section 16. The fish kill extended approximately three miles to the E66 bridge over Prairie Creek in Section 13, Leroy Township in Benton County. It was estimated that 20,828.50 fish were killed with a value of \$2,956.09. The Fisheries investigative costs equaled \$279.25 and the Field Office investigative costs equaled \$1,483.68. The total restitution and investigative costs equaled \$4,719.02.

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8. On November 19, 2012, DNR Field Office 1 issued a Notice of Violation letter to Mr. Rieck for the violations discovered in October 2012. The letter stated that the matter was being referred for a possible enforcement action.

9. In August 2013, personnel from the Iowa Department of Agriculture and Land Stewardship (IDALS) visited Mr. Rieck's facility to conduct an inspection of the basins and other control structures. The IDALS personnel noted that the vegetation in the grassed filter was being established and Mr. Rieck was maintaining his basins. Based on the report from IDALS and the improvements Mr. Rieck made at his facility, DNR Field Office 1 determined that the cause of the discharge has been eliminated. DNR Field Office 1 will continue to monitor and evaluate the facility.

10. DNR Field Office 1 previously visited this facility in August 2005 to observe the newly constructed solids settling structure. Mr. Rieck stated that other than recommending modification to the solids settling at the time of construction, NRCS had provided no direction in the management of the structure. Mr. Rieck modified the settling outlet because of plugging and ponding of liquids. DNR Field Office 1 personnel discussed the need to develop a solid stacking plan.

IV. CONCLUSIONS OF LAW

Mr. Rieck neither admits nor denies the Conclusions of Law and enters into this administrative consent order for settlement purposes.

1. Iowa Code section 459A.104 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

2. Iowa Code section 455B.186 prohibits the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. During DNR Field Office 1's investigation it was determined that manure liquids and solids from the Rieck Feedlot were discharged into a tributary of Prairie Creek. The above-mentioned facts indicate violations of these provisions.

3. 567 IAC 65.101 states that the minimum level of manure control for any open feedlot shall be the removal of settleable solids from the manure prior to a discharge to a water of the state. During the investigation on October 25, 2012, DNR Field Office 1 noted manure solids in the waterway, in the stream and on the stream bottom. The above facts indicate a violation of this provision.

4. 567 IAC 65.101(9) and 567 IAC chapter 131 require that a person storing, handling, transporting, or land-applying manure, process wastewater, open

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feedlot effluent, settled open feedlot effluent or settleable solids from an open feedlot operation who becomes aware of a release shall notify the DNR of the occurrence of the release as soon as possible but no later than six hours after the onset or discovery of the release. Manure solids and liquids from the Rieck Feedlot were discharged into a tributary of Prairie Creek and no notification was received by the DNR. The above mentioned facts indicate a violation of this provision.

5. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. The laboratory results indicated elevated pollutants and a fish kill was confirmed. Additionally, DNR Field Office 1 personnel observed turbid water as well as a manure odor to the water. The above mentioned facts indicate violations of the general water quality criteria.

6. 567 IAC 101(6) requires that all open feedlot effluent shall be land-applied in a manner which will not cause pollution of surface water or groundwater. DNR Field Office 1 observed land application of manure within 50 feet of a small tributary of Prairie Creek (Site 9). This location was upstream of the feedlot discharge and along the small tributary of Prairie Creek. The application was not done in a manner that would not cause pollution. The above-mentioned facts indicate a violation of this provision.

7. Iowa Code section 481A.151 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. The DNR has adopted 571 IAC chapter 113. 571 IAC chapter 113 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. A fish kill resulted from the manure discharge from the Rieck Feedlot.

V. ORDER

THEREFORE, the DNR orders and Darwin Rieck agrees to do the following:

1. Mr. Rieck shall pay fish restitution in the amount of \$2,956.09 and investigative costs in the amount of \$1,762.93 within 30 days of the date the Director signs this administrative consent order; and
2. Mr. Rieck shall pay an administrative penalty in the amount of \$4,750.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

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1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$4,750.00. The administrative penalty is determined as follows:

Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” Mr. Rieck gained an economic benefit by failing to properly contain the manure from his facility. Mr. Rieck avoided the costs associated with not properly maintaining the settling structure. Mr. Rieck indicated that he scrapes the feedlot once a week if weather conditions allow. Additionally, Mr. Rieck has saved money by delaying the costs of not installing proper settling structures, such as a solids stacking facility or total containment. Mr. Rieck also avoided the cost and time associated with properly applying manure. Based on the above fact, the economic benefit Mr. Rieck received was at least \$1,750.00 and that amount is assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. DNR Field Office 1 documented a manure discharge that led to documented water quality violations and a fish kill. These violations threaten the integrity of the regulatory programs because compliance with animal feeding operation requirements is required of all persons in this state. Therefore, \$2,000.00 is assessed for this factor.

Culpability – Darwin Rieck has a duty to remain knowledgeable of DNR’s requirements and to be alert to the probability that his conduct is subject to DNR’s rules. In 2005, Mr. Rieck was informed of steps he could take to prevent future discharges. Therefore, \$1,000.00 is assessed for this factor.

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VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Darwin Rieck. For that reason Darwin Rieck waives the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 31st day of
January, 2014.



DARWIN RIECK

Dated this 16 day of
January, 2014.

Facility #56695; Kelli Book, DNR Field Office 1, EPA, VIII.D.1.B and VIII.D.3.a